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4-5-02  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ERIC JOSEPH EPSTEIN,  
Plaintiff,

v.

SPENCER ABRAHAM, Secretary of the  
United States Department of Energy;  
HERBERT WATKINS,  
Contracting officer, United States  
Department of Energy,

and

EXCELON GENERATION COMPANY, LLC  
Defendants.

CIVIL ACTION NO. 01-0682

Judge Kane

FILED  
HARRISBURG

APR - 4 2002

MARY E. D'ANDREA, CLERK  
Per.   
DEPUTY CLERK

ORDER

Before the Court is the Defendants' motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Two matters affecting jurisdiction and justiciability were not raised or briefed by the parties.

Issue 1: Jurisdiction

Does The Nuclear Waste Policy Act, 42 U.S.C. § 10139(a) prevent this Court from exercising jurisdiction over Count One of Plaintiff's complaint? Does § 10139(a) preclude jurisdiction over Count Two?

Issue 2: Standing

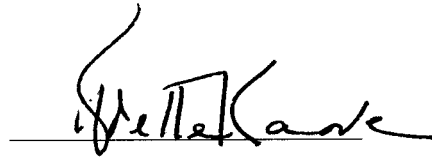
Does the Plaintiff have standing to bring Count One of his Complaint under the National Environmental Policy Act, 42 U.S.C. § 4331 – 32? More specifically, can standing be asserted under the APA, 5 U.S.C. § 702, to challenge the failure to conduct an Environmental Impact Statement?

Therefore, the parties shall file supplemental briefs only on the above issues as follows:

1. By April 19, 2002, each Defendant shall submit a brief of no longer than fifteen (15) pages, double spaced, and supporting documents, if any.

2. By May 8, 2002, Plaintiff shall file a response brief of no longer than fifteen (15) pages, double spaced, and supporting documents, if any.
3. Defendants may, if necessary, file replies of up to ten ~~(10)~~ pages by May 17, 2002.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Yvette Kane", written over a horizontal line.

Yvette Kane  
United States District Judge

Dated: April 3, 2002